

**IN THE COURT OF SHAUKAT AHMAD KHAN**  
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI  
(AT BABER MELA)

SPECIAL CASE NO. : 15/3 OF 2023  
DATE OF ORIGINAL INSTITUTION : 23.01.2023  
DATE OF TRANSFER IN : 15.03.2023  
DATE OF DECISION : 06.06.2023

STATE THROUGH SHAL MUHAMMAD SHO, POLICE STATION  
KALAYA

.....(COMPLAINANT)

-VERSUS-

IMTIAZ KHAN S/O STORZAI KHAN AGED ABOUT 33 YEARS, R/O  
CASTE BEZOT, TAPPA MIR KALI KHEL, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

**Present:** Umar Niaz, District Public Prosecutor for State.  
: Adnan Afridi Advocate for accused facing trial.

**FIR No. 121**                      **Dated:** 11.12.2022      **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station:** Kalaya

JUDGEMENT  
06.06.2023

The above-named accused faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR  
No. 121, Dated 11.12.2022 of Police Station Kalaya.

- (2).                      The case of the prosecution as per contents of  
Murasila based FIR is; that on 01.11.2022, the complainant,  
Shal Muhammad SHO along with constables Muhammad  
Ayaz with belt No. 446 and Abdul Sattar in an official  
vehicle driving by Muhammad Ayaz with belt No. 1348  
during routine patrolling laid a picket on the spot where at  
about 1600 hours a person having a plastic shopper in his  
right hand on way from Headquarter Chowk towards the

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picket, was stopped. His person was searched but nothing incriminating was recovered from his personal search. The search of the shopper led the complainant to the recovery of 01 packet of chars wrapped with yellow colour scotch tape, weighing 1500 grams. The complainant separated 10 grams of chars from the total quantity for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 1490 grams were sealed in parcel no. 2 by placing/affixing monograms of 'SH' on both parcels. The accused disclosed his name as **Imtiaz Khan** s/o Storzai Khan who was accordingly arrested by issuing his card of arrest. The complainant took into possession the recovered chars vide recovery memo. Murasila was drafted and sent to Police Station through constable Muhammad Ayaz which was converted into FIR by Asmat Ali AMHC.

- (3). After registration of FIR, it was handed over to Muhammad Hanif OII for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan Ex. PB on the pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 13.12.2022, the IO sent the sample of chars for chemical analysis to FSL vide application Ex. PW 4/3 through constable Abdul Wadood and road permit certificate Ex. PW 4/4, the result whereof Ex. PK was received and placed on file by him. After completion of investigation, he handed over the case file to

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SHO who submitted complete challan against the accused facing trial.

(4). Upon receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to him in line with section 265-C CrPC and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

I. Asmat Ali AMHC appeared in the witness box as PW-1. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has also received the case property duly packed and sealed from the complainant which he had kept in Mal Khana in safe custody. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 1/1 and handed over the sample of the case property in parcel no. 1 to the IO for sending the same to FSL on 13.12.2022.

II. Shal Muhammad SHO is the complainant of the instant case. He as PW-2 reiterated the same story as narrated in the FIR. He has also submitted complete challan Ex. PW 2/2 against the accused facing trial.

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III. Constable Muhammad Ayaz is PW-3. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.

IV. Investigating Officer Muhammad Hanif SI was examined as PW-4 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PB on the pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 4/1 and Ex. PW 4/2, sent the representative sample to FSL along with application addressed to the incharge FSL Ex. PW 4/3 and road permit certificate Ex. PW 4/4 and result of the same Ex. PK was placed on file by him, placed on file copy of Register No. 19 Ex. PW 1/1 and copies of daily diaries Ex. PW 4/5 and Ex. PW 4/6 and submitted the case file to SHO for its onward submission.

V. Constable Abdul Wadood is PW-5. He has taken the sample of recovered chars in parcel no. 1 to

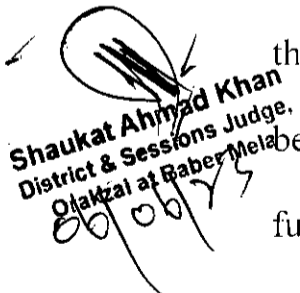
  
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the FSL for chemical analysis on 13.12.2022  
and after submission of the same, he has handed  
over the receipt of the parcel to the IO.

(5). Prosecution closed its evidence whereafter the statement of accused was recorded u/s 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of learned DPP for the State and counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the State submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the sample for chemical analysis has been transmitted to the FSL within the prescribed period and the same has been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses of the recovery,

  
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the official transmitted the sample to the FSL and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the alleged chars have been shown recovered from his possession and the report of FSL support the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the IO on the spot, as detailed by the prosecution on the case file. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by learned DPP for the State, arguments of learned counsel for the defence and the available record, following are the points for determination of charge against the accused facing trial:


- (i). Whether the occurrence has taken place in the mode and manner as alleged by the prosecution?
- (ii). Whether the investigation has been carried out in the mode and manner as alleged by the prosecution?
- (iii). Whether the case of prosecution is substantiated through report of FSL?

(9). The case of prosecution, as per contents of Murasila Ex. PA/1, court statements of Shal Muhammad SHO as PW-

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2 and constable Muhammad Ayaz as PW-3 is, that the complainant Shal Muhammad SHO/PW-2 along with constables Muhammad Ayaz/PW-3 and Abdul Sattar in an official vehicle driving by Muhammad Ayaz with belt No. 1348 during routine patrolling laid a picket on the spot where at about 1600 hours a person having a plastic shopper in his right hand on way from Headquarter Chowk towards the picket, was stopped but nothing incriminating was recovered from his personal search. The search of the shopper led the complainant to the recovery of 01 packet of chars wrapped with yellow colour scotch tape, weighing 1500 grams. The complainant/PW-2 on the spot has shown himself separated 10 grams of chars from the total quantity for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 1490 grams were sealed in parcel no. 2, placing/affixing monograms of 'SH' on both parcels. The accused disclosing his name as **Imtiaz Khan** s/o Storzai Khel, has been shown arrested on the spot by issuing his card of arrest Ex. PW 2/1.

The Murasila Ex. PA/1 has been transmitted by constable Muhammad Ayaz/PW-3 to police station where, after registration of FIR by Asmat Ali AMHC/PW-1, it has been handed over to Muhammad Hanif SI/PW-4, the IO of the case. The IO has visited the spot and conducted investigation by making a site plan Ex. PB on the pointation of Shal

  
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Muhammad SHO/PW-2 and recorded the statements of marginal witnesses.

In order to prove its case the prosecution has examined complainant as PW-2, marginal witness of recovery memo who is eyewitness of the occurrence as well, as PW-3, Moharrir of police station as PW-1, the IO as PW-4 and constable Abdul Wadood who has transmitted representative sample to FSL, as PW-5. Statement of all the aforementioned witnesses have been reproduced herein before, wherein they have unanimously supported the case of prosecution.

It is evident from the record that the occurrence has taken place within the local limits of Police Station Kalaya where the complainant/PW-2 is posted as SHO of the concerned police station. The witnesses accompanied him on the spot are also posted at Police Station Kalaya. The factum of the presence of complainant along with constable Muhammad Ayaz no. 1446/PW-3, constable Abdul Sattar and driver Muhammad Ayaz, is also supported by DD No. 3 of 11.12.2022 vide which the complainant along with above-named witnesses and driver had left the police station at 08:30 pm for patrolling of the area. This fact has also been confirmed by the complainant and eyewitness in their statements as PW-2 and PW-3 respectively, wherein both of them have stated that after departing from police station they

  
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have patrolled various areas and thereafter reached the spot. The factum of presence of complainant party is also supported by the site plan Ex. PB where the complainant, the witnesses, the official vehicle and the driver has been shown present on the spot.

With respect to recovery, weighing, packing and sealing of the chars, both the complainant and eyewitness are unanimous on the facts that the accused was holding a shopping bag in his right hand, that nothing incriminating have been recovered from personal search of the accused, that a packet of chars wrapped in yellow colour scotch tape has been recovered from a shopping bag which has been weighed on the spot, that 10 grams of chars has been separated for representative sample for chemical analysis through FSL which has been sealed in parcel no. 1 while rest of the quantity as 1490 grams of chars have been sealed in parcel no. 2, and that both the parcels have been affixed with three monograms of 'SH' which is in the name of complainant. Both the witnesses have been cross examined on all the aforementioned aspects but nothing contradictory could be extracted from them except that the kind and colour of chars is not mentioned in the Murasila, but in cross examination the complainant/PW-2 stated that the texture of chars was mild hard of brown black colour while the eyewitness in his cross examination as PW-3 has stated that

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the texture of chars was hard of red black colour. Similarly, the complainant/PW-2 has stated that the accused was seen from 10 to 12 paces while the marginal witness in his cross examination has stated that the accused was first seen at a distance of 20/25 paces. However, all these contradictions on one hand are minor and negligible while on the other hand these have been occurred due to variation in personal observations of the things by the PWs i.e., to one a thing may seem hard while the other would view the same thing as mild hard. Similarly, to one the colour of thing would be brown black while the other may view the same as red black. In this way, it is quite possible that the complainant/PW-2 would have seen the accused first at a distance of 10/12 paces while the marginal witness would have seen the accused at a distance of 20/25 paces.

After drafting of the documents, these have been handed over to PW-3 for transmission of the same to the police station who has taken the same to the police station and handed over to PW-1/Moharrir of the police station for registration of FIR. In this respect, both the witnesses are unanimous on the point that the documents have been handed over to PW-3 at 1625 hours and he has travelled to the police station via motorcycle where, after handing over the same to PW-1, FIR has been registered at 1655 hours. The factum of the arrival of PW-3 to the police station is supported by DD

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No. 7 of 11.12.2022 according to which the documents have been received by PW-1 from Shal Muhammad SHO/PW-2 through constable Muhammad Ayaz/PW-3 at 1640 hours. Similarly, both the witnesses are also unanimous on the fact that the constable Muhammad Ayaz/PW-3, after handing over the documents to PW-1, has returned to the spot. There is no contradiction between the statements of both the witnesses as to show that either the documents have not been handed over to PW-3 or it has not been taken to the police station by him except the fact that while going to the spot the complainant party have not taken the motorcycle along with them but none of the witnesses has anywhere in their statements has stated that the motorcycle belong to the complainant party rather in their cross examination when they were asked that by which means of transport the carrier of Murasila had travelled to police station, they have simply answered that he had travelled to the police station through motorcycle. But no question has been put to either of the PWs regarding the ownership of the motorcycle.

With respect to making of investigation on the spot, the IO/PW-4 after receipt of the Murasila, has gone to the spot which is supported by DD No. 9 of 11.12.2022. The factum of arrival of the IO on the spot is substantiated by the complainant/PW-2 and the eyewitness as PW-3. There are some minor contradictions regarding the time of arrival of the

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IO on the spot and the time spent by him with the complainant party over there i.e., as per DD No. 9 of 11.12.2022 he has left the police station at 1705 hours; however, as per his cross examination he has reached the place of occurrence at 1700 hours while as per cross examination of complainant/PW-3, he has arrived on the spot at 1720 hours. But keeping in view the distance between the place of occurrence and the police station coverable within 10 minutes, the said contradiction seems minor in nature and does not affect the case of prosecution where on all other material aspects the witnesses are unanimous. The return of the complainant along with accused are also supported by DD No. 11 of 11.12.2022. The accused and the case property have been handed over by the complainant/PW-2 to the Moharrir/PW-1 of the police station. The statement of PW-1 and complainant/PW-2 are unanimous in this respect as well. The case property has been handed over to PW-1, the Moharrir of police station, the entry of the same has been made in register no. 19. The case property has also been produced before the court at the time of production of accused as evident from the order dated 12.12.2022 of learned Judicial Magistrate-I, Kalaya. Similarly, on 13.12.2022 the representative sample in parcel no. 1 has been handed over to PW-5 who has taken the same to FSL. The chain of transmission of the case property from the spot to

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the police station and then from the police station to the FSL, is supported by statement of complainant/PW-2, statement of Moharrir of the police station as PW-1 and statement of constable Abdul Wadood as PW-5. All the three witnesses are unanimous on all the material points and nothing contradictory could have been extracted from any of the witness. The report of FSL Ex. PK is also positive for chars.

- (10). Hence, in view of what is discussed above, it is held that the prosecution has successfully bring home the charge against the accused facing trial. Therefore, the accused namely, **Imtiaz Khan** is held guilty of the offence u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act. However, keeping in view the minor contradictions, which though do not go to the root of case of prosecution, but these cannot be ignored at all. Moreover, the accused is first offender and young and he must have a chance of repentance; therefore instead of sentencing him at once, he is placed on probation for a period of two years subject to the executing of bonds in the sum of Rs. 50,000/- with two sureties to the effect that the accused would commit no offence and to keep the peace and be of good behavior during the period of bond and to appear and receive the sentence, if called upon to do so during that period to the satisfaction of Probation Officer concerned. Case property i.e., chars be destroyed in

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accordance with law after the period provided for  
appeal/revision. Consign.

**Pronounced**  
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**CERTIFICATE**

Certified that this judgement consists of fourteen (14)  
pages. Each page has been read, corrected wherever  
necessary and signed by me.

Dated: 06.06.2023

**SHAUKAT AHMAD KHAN**  
Sessions Judge/Judge Special Court,  
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